IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 56/2006
(Khaju Khan Vs. State of Rajasthan & Anr.)

Date of Order : 31/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.C.Bhoot for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. M.K.Garg for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter), the petitioner seeks quashing of FIR No.343/05 dated 20.6.2005, Police Station, Udaimandir, Jodhpur for the offences under Sections 420 and 406 IPC.

I have heard learned counsel for the petitioner, public prosecutor and counsel appearing for the complainant non-petitioner No.2. Carefully gone through the FIR as also the Police Investigation Diary.

It is contended by learned counsel for the petitioner that in order to harass the petitioner, a civil suit was filed by

Smt. Batul through her husband and power of attornery holder in the Court of Additional District Judge, Deedwana being Civil Original Suit No.68/98 with regard to the partnership firm. It appears that Smt. Batul and the petitioner have been the partners in a Gas Agency. That suit ultimately came to be dismissed and therefore, the instant FIR has been lodged in order to harass the petitioner. Learned counsel for the petitioner has relied on decision of Hon'ble Supreme Court in Rambiraji Devi Vs. Umesh Kumar 2006 (1) WLC (SC) (Criminal) 723.

Learned public prosecutor and the counsel appearing for the non-petitioner No.2 submits that the instant FIR has nothing to do with a suit filed by Smt. Batul. It has not been disputed that Smt. Batul and the petitioner have been the partners and if any dispute arose between the partners of a Gas Agency, that has nothing to do with the present occurrence. It is contended by learned public prosecutor that bare reading of FIR, it discloses the cognizable offences and after through investigation, the police came to the conclusion that prima-facie offences mentioned in the FIR are made out and a charge sheet is proposed to be filed before the competent Court.

I have also gone through the statements of witnesses recorded by the police under Section 161 of the Code during investigation as also the final report under Section 173 of the Code which is proposed to be filed in the Court in the form of

challan against the present petitioner. From the evidence collected by the police and the statements of witnesses recorded under Section 161 of the Code, prima-facie it appears that right from the inception the petitioner with dishonest and fraudulent intention induced the complainant non-petitioner No.2 to deliver the property i.e. money on two occasions to the petitioner knowing well that he is not going to sell the land or transfer the property in consideration of money received by him by fraudulent and dishonest intention and therefore, prima-facie it cannot be said that the petitioner had no intention to deceive the complainant. The essential ingredients for the offence of cheating as envisaged under Section 415 IPC are prima-facie made out. It is settled law that if the FIR discloses the cognizable offences and if it is not absurd or barred by any provision of law or inherently improbable, then the Court should refrain in interfering with the investigation.

Keeping in view the facts of the instant case as evident from the police investigation diary, in my view, it cannot be said that the FIR has been lodged by the complainant in order to harass the petitioner or the FIR is inherently improbable, absurd or barred by any provisions of law. The suit filed by Smt. Batul against the petitioner relating to partnership dispute has no relevancy with the instant FIR. In this view of the matter, it cannot be said that the FIR and the investigation undertaken

thereunder would result in serious miscarriage of justice or abuse of process of any Court.

In State of Haryana & ors. Vs. Bhajan Lal & ors., 1992 (Suppl) 1 SCC 335, the Hon'ble Supreme Court held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare case. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Apex Court further held that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offence is legitimately exercise in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds.

In Union of India & ors. Vs. B.R. Bajaj & ors., (1994) 2 SCC 277, the Hon'ble Apex Court held that the inherent power under Section 482 of the Code cannot be exercise to quash the FIR when the allegations in FIR discloses commission of a cognizable offence because several aspect of the FIR still to be

investigated by the police. At that stage, the High Court cannot go into the question whether offences alleged in the FIR are made out or not. The statutory power of police to investigate cannot be interfered with in exercise of inherent power by the High Court.

In Rajesh Bajaj Vs. State NCT of Delhi & ors., AIR 1999 SC 1216, the Hon'ble Supreme Court held that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor it is necessary that the complainant should state in so may words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at the stage of investigation. If factual foundation for the offence has been laid in the complaint, the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.

Keeping in view of the decisions of Hon'ble Supreme Court in State of Haryana Vs. Bhajan Lal (supra), in Union of

India and Ors. Vs. B.R.Bajaj and Ors. (supra) and in Rajesh Bajaj Vs. State NCT of Delhi & ors. in my view, no case for quashing the FIR is made out.

The petition has no force and it is, therefore, dismissed. Stay petition is also dismissed.

(H.R.PANWAR),J.

rp